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राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश शासन द्वारा प्रकाशित

शिमला, शनिवार, 5 मार्च, 1960/14 फाल्गुन, 1881

HIMACHAL PRADESH ADMINISTRATION

REVENUE DEPARTMENT

NOTIFICATION

Simla-4, the 18th February, 1960/29th Magha, 1881

No. R. 22-381/57.—In exercise of the powers vested in him under section 13 of the Punjab Restitution of Mortgaged Lands Act, 1938 as applied to Himachal Pradesh, the Lieutenant Governor, Himachal Pradesh, is pleased to make the following Rules:—

RULES UNDER THE PUNJAB RESTITUTION OF MORTGAGED LANDS ACT, 1938 (AS APPLIED TO HIMACHAL PRADESH)

1. These rules shall be called the Himachal Pradesh Restitution of Mortgaged Lands Rules, 1960.

2. These rules shall come into force at once.

3. *Definitions*.—In these rules unless there be any thing repugnant in the context,—

(i) 'Act' means the Punjab Restitution of Mortgaged Lands Act, 1938, as applied to Himachal Pradesh,

(ii) 'Compensation' means the amount assessed by the Collector under section 7 of the Act as payable to a mortgagee prior to the restitution of any mortgaged land to the mortgagor, and

(iii) 'petition' means a petition under section 4 of the Act.

4. (1) A petition shall be in the form attached to these rules, signed and verified as laid down in Order VI, rules 14 and 15, respectively, of the Code of Civil Procedure.

(2) A petition shall bear the court-fee prescribed by Article 1 (b) of Schedule II to the Court-fees Act, 1870, as amended in its application to Himachal Pradesh, be accompanied by an attested copy of the latest jamabandi entry relating to the land, and a copy of the original mutation of mortgage. There shall also be filed with the petition as many copies thereof as is the number of persons mentioned in columns 2 and 3 of the petition:

Provided that if the petitioner is unable to supply copies of the latest Jamabandi and the original mutation of the mortgage, he shall pay a fee of Rs. 2 and the Collector shall get those copies from his office.

(3) A petition shall be presented to the Collector by the petitioner personally or through a duly authorised agent. In the case of two or more petitioners, it may be presented by any one of them.

5. When there are more mortgagors than one and all of them do not join in making a petition, it may be made by any one or more of them, the names of the others being set out in column 2 of the petition; and the other mortgagors may subsequently be allowed to join as petitioners on such terms as may be decided by the Officer hearing the petition.

6. On receipt of a petition, or if it is not in order after getting the necessary corrections made, the Collector shall order it to be registered, fix a date for hearing the petition and cause notice thereof, together with a copy of the petition, to be served on the persons mentioned in columns 2 and 3 of the petition.

7. Except as otherwise provided by these rules an officer dealing with a petition shall be guided by the procedure prescribed for Revenue Officers under the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953, in so far as it may be applicable.

8. The persons mentioned in columns 2 and 3 of the petition may at the first hearing, and shall if required by the Collector at any time, present a written statement of their defence, which shall also be signed and verified as laid down in order VI, rules 14 and 15 respectively, of the Code of Civil Procedure, 1908.

9. (1) Parties to proceedings under the Act may appear in person or through a legal practitioner holding a Power of Attorney or other duly authorised agent.

(2) If any one of the petitioners or respondents is a minor or of unsound mind, the provisions of order XXXII, Code of Civil Procedure, 1908, shall so far as these may be applicable, apply to proceedings under the Act.

10. The Collector shall then hear the evidence produced by the parties and make such further enquiries as he may deem fit.

11. In assessing the benefits received by a mortgagee while in possession the Collector shall, in the absence of any satisfactory evidence to the contrary presume that they were equal to the net assets of the land as defined in section 4 (12) of the Himachal Pradesh Land Revenue Act, 1953. To avoid difficulty where cash rents are rare and to secure uniformity, the estimate of net assets based on rents in kind prescribed by rule 1 of the Land Revenue Assessment Rules, 1929, shall be used. For the Collector's assistance these have been tabulated and the Collector shall in the absence of evidence to the contrary, adopt the scale of benefits shown in the table for his district. Such contrary evidence may be offered by a mortgagor *inter alia* to justify a proportionate increase in the net assets for year of high prices for areas of intensive cultivation, and by a mortgagee *inter alia* to justify a proportionate reduction of these net assets for extraordinary calamities.

12. The compensation shall be the balance left after deduction of the sum assessed under the provisions of the foregoing rules from twice the amount of the principal sum originally advanced under the mortgage.

Provided that the compensation shall in no case exceed the scale laid down in sub-section (2) of section 7 of the Act.

13. After determining the amount of compensation due, the Collector shall fix a time, which may for sufficient reasons be subsequently extended, within which the petitioner shall deposit the amount in the Government treasury for disbursement to the mortgagee.

14. When the mortgagee has deposited with the Collector the mortgage deed and other documents, if any, evidencing the mortgagor's title to the land, or satisfied him that the documents though at one time existing had been lost, he shall be entitled to receive the amount of compensation in accordance with the rules of the treasury, and the documents of title shall be made over to the petitioner.

15. (1) On application by a petitioner in whose favour an order has been made under section 2 of the Act, the Collector may issue a warrant directing the petitioner to be put into possession of the land.

(2) If any co-mortgagor fails to apply under rule 5 to be made a petitioner, or being a petitioner fails to pay his share of the compensation assessed, possession shall be given to the mortgagor by whom such compensation has been paid in full; and such co-mortgagor or shall continue to be shown in the revenue records as mortgagor until such time as he has paid his share, the person who has made payment being shown as mortgagee of his share.

(3) The warrant shall after execution and with necessary endorsement be returned to the Collector.

(4) Possession shall normally be delivered between the first day of May and fifteenth day of June unless the land is lying vacant, but the petitioner may, subject to the payment, by him of compensation for standing crops, as may be determined by the Collector, be allowed possession at any other time.

16. (1) When any mortgage transaction affects land situated in more districts than one, a petition may be made to the Collector of any one of those districts, and the Collector to whom the petition is made shall deal with the case as if the entire land were situated in his district.

(2) In a petition covered by the above clause the Collector receiving application, shall transmit a copy of the same to the Collector of each district where any part of the rest of the land is situated.

(3) The Collector hearing the case may have the statements contemplated

by rule No. 11 so far as these relate to the areas situated in other districts, prepared through the Collectors thereof.

(4) Every final order passed under sections 6 to 9 of the Act by the Collector enquiring into the petition shall, so far as it relates to the land lying in the other districts, be similarly communicated to the Collectors thereof.

17. If after the receipts by any Collector of an intimation under rule 16 (2) above, any fresh petition is made to him in respect of the mortgage covered by the first petition; he shall forward the same to the Collector of the district where the first petition is pending and advise the petitioner to seek his remedy there.

18. In cases covered by rule 16 above, the Collector issuing a warrant of possession under rule 15 shall issue a separate warrant for the area lying in each other district and transmit the same for execution to the Collector thereof, who shall execute the warrant as if it had been issued by himself.

19. The dismissal of any petition for default shall not bar a fresh petition on similar facts, nor shall the failure of a petitioner to pay the account of compensation, have such a result:

Provided that such fresh petition shall not entitle the Collector to question the previous decision, except in so far as it may have been altered on appeal; but the Collector may hold an enquiry regarding the period subsequent to the date of the presentation of the petition in the first case, taking the amount assessed as compensation in that case as the mortgage debt.

20. If there is any dispute between persons claiming to be entitled to compensation, the Collector may either decide the dispute himself, or order the sum deposited by the petitioner not to be paid to any one till the contesting persons have had their rights decided by a competent court of law.

21. (1) An appeal against an order by a Collector or a Commissioner under the Act shall be preferred by submitting a memorandum accompanied by an attested copy of the order appealed against.

(2) Each such memorandum shall bear the court-fee prescribed by article 11 of Schedule II of the Court-fees Act 1870 as amended in its application to Himachal Pradesh.

22. Appeals shall be heard, after proper notice to the parties, on a date fixed for the purpose, and the procedure in force for the reception, hearing and disposal of appeals by Revenue Officers under the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953, shall apply so far as it is applicable.

FORM A

APPLICATION UNDER SECTION 4 OF THE RESTITUTION OF MORTGAGED LANDS ACT

In the District.....Tehsil.....Year.....

Name, parentage, caste and residence of the applicant	Name, parentage, caste and residence of other mortgagors not joining the application	Name, parentage, caste and residence of the mortgagee and (b) if he is not in possession, of the person in possession of the land	The area and the date of description of the land mortgage to be restored	The name, parentage, caste and residence of the original mortgagor and mortgagee
1	2	3	4	5

FORM A—Concl'd.

The amount for which the mortgage was effected	Payments if any, made towards the mortgage debt	Period for which the mortgagee has been in possession	How does the applicant claim the right of restitution	In case the respondent was not the original mortgagee, the manner in which he came to possess the mortgagee rights	Remarks
6	7	8	9	10	11

Notes: (1) Attested copies of the latest jamabandi entry relating to the land and the mutation of the mortgage in question should be attached to the petition.

(2) The facts in columns 5 to 11 should be given as are known to the petitioner and any mistake therein will not effect the petition.

(3) If the petitioner is unable to secure copies of the latest jamabandi entry and the mortgage mutation or to give the fact required in column Nos. 5 to 11 he should pay a fee of Rs. 2 and the Collector shall get the necessary documents and facts from his office.

Signature of the petitioner

VERIFICATION

Verified that the facts set out in columns.....are true to my knowledge while facts set out in columns No.....are true to my belief and information.

Verified at.....on.....

Signature of the person making the verification

By order,
B. N. MAHESHWARI, I.A.S.,
Chief Secretary.